FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM 1948

No. 110

LOCAL UNION No. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, JOHN STRONG, THOMAS HICKEY, SAMUEL GRASSO, ANDREW GARRILLO and THEODORE SCHULZ,

Petitioners,

against

MOTOR HAULAGE COMPANY, INC.,

Respondent.

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

LOUIS B. BOUDIN,
Attorney for Petitioners,
1776 Broadway,
New York City, N. Y.

INDEX

AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM 1948

No. 854

LOCAL UNION No. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, JOHN STRONG, THOMAS HICKEY, SAMUEL GRASSO, ANDREW GAZZILLO and THEODORE SCHULZ,

Petitioners,

against

MOTOR HAULAGE COMPANY, INC.,

Respondent.

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Respondent's brief in opposition to petition for a writ of certiorari in the within matter is a document so replete with inaccurate statements of fact, with incorrect statements of petitioners' position, and with incorrect and misleading citations of authority, that a reply brief fully discussing all of respondent's deviations from fact and law would be so lengthy as to constitute an undue burden upon this Court. Accordingly, although we would like to give exhaustive treatment to the various statements made and claims advanced by respondent, we shall confine ourselves to pointing out just a few of respondent's grossly misleading statements and claims.

POINT I

The Arbitration Agreement provided that arbitration was to be had before the Arbitration Authority for the Trucking Industry of the City of New York and not before Hugh E. Sheridan.

On page 2 of its brief respondent asserts that arbitrable disputes between the parties were to be submitted to Hugh E. Sheridan, as the Impartial Chairman. An examination of the collective bargaining agreement between Local 807 and respondent, however, conclusively demonstrates that there was no agreement to submit disputes to arbitration by Mr. Sheridan. Section 9 of the collective bargaining agreement, which embodies the primary agreement between the parties to submit disputes to arbitration, provides:

> "Should any dispute arise between the Employer and an Employee, or the Employer and the Union, concerning the application or interpretation of any provision of this agreement or concerning any term or condition of employment, or otherwise, the representatives of the Employer and the representatives of the Union shall attempt to adjust the controversy between themselves. In the event they are unable to adjust the same, the dispute shall, within two days after the request of either party, be submitted *to the Arbitration Authority for the Trucking Industry of the City of New York* for arbitration, whose decision shall be final and binding upon the parties hereto" (fols. 162-163 of the Record on Appeal in the Appellate Division). (Italics supplied.)

As we have indicated in our original brief in support of our application for a writ of certiorari, although Mr. Sheridan is still alive, the Arbitration Authority for the Trucking Industry of the City of New York had ceased to exist several months prior to the holding of the so-called "arbitration" in this case. Accordingly, if respondent was entitled to arbitration at all, since the named arbitrator

was out of existence at the time arbitration was sought, an application should have been made, pursuant to the applicable New York statute, to the Supreme Court of the State of New York for an order appointing an arbitrator. There was absolutely no basis in law for an arbitration before Mr. Sheridan, since Mr. Sheridan as an individual had never been named as arbitrator and his position of Impartial Chairman of the Arbitration Authority had ceased to exist.

POINT II

There was no general appearance by the officers of the Union against whom the judgment appealed from runs.

In an attempt to answer petitioners' contention that the judgment appealed from violates due process of law because the parties against whom it runs were never served with process in this case, respondent advances the claim that there was a general appearance by the parties against whom the judgment runs, and cites numerous authorities for the obvious proposition that where there has been a general appearance the Court obtains jurisdiction over the person so that the question of service of process ceases to be of significance. But the fact is that there never was a general appearance by the parties against whom the judgment runs prior to the entry of that judgment, and the only "appearance" thereafter was to take an appeal therefrom.

The record clearly shows that the first proceeding, the one that was brought against the Union in its common name, was initiated by service of the petition upon the attorneys for the Union. All papers in that proceeding bore captions containing the common name of the Union alone and no paper bore any caption containing the names of Strong and Hickey, the officers of the Union against

whom the judgment now appealed from runs. Indeed, Strong and Hickey never even made affidavit in that proceeding.

When the case was sent back by the Court of Appeals after that Court's decision that the action could not be maintained against the Union in its common name, respondent made an application at Special Term of the Supreme Court of the State of New York to amend the title of the action by substituting the names of Strong and Hickey for the common name of the Union as party defendant.

That application was made by a motion in the same old proceeding, and its caption contained only the common name of the Union as party defendant and did not contain the names of Strong and Hickey at all. Furthermore, the application was not served upon Strong and Hickey but upon the attorneys for the Union as such; and they, in turn, opposed the application *as attorneys for the Union.* The application was thereupon granted and judgment was entered not against the Union but against John Strong as President and Thomas Hickey as Secretary and Treasurer thereof, this being the first time the names of the present defendants (petitioners in this Court) appeared in the record. At no time up to the entry of the judgment appealed from did the name of Strong or Hickey appear in the proceeding; and the only thing left for them to do when judgment was entered against them was to appeal from that judgment, since the New York practice does not provide for any proceeding by which they could have sought to set the judgment aside.

Clearly, the judgment was entered in violation of petitioners' rights under the due process clause of the Fourteenth Amendment inasmuch as they had never been served with process nor appeared in the action.

The case of *Yeager* v. *Cooperative Underwriters Association,* 243 App. Div. 743, cited by the Court of Appeals in its opinion remitting the proceeding to Special Term, clearly demonstrates that the appearance by the Union in its common name was not an appearance by the officers

of the Union who might be sued under Section 13 of the General Associations Law. The record in that case shows that it was an action for libel brought against an unincorporated association in its common name. The summons and complaint were served upon one Frank P. Tucker. The defendant association thereupon served its answer which was verified by the said Tucker as its secretary. The association then succeeded, through dilatory tactics, in preventing any steps in the action being taken until after the short statute of limitations had run. The association then moved to dismiss the action on the ground that there was no party defendant before the Court. The plaintiff countered by making a motion to substitute as party defendant Mr. Tucker, upon whom process had been served and who had verified the association's answer, the plaintiff claiming that he was treasurer of the association at the time process was served upon him. Plaintiff's motion for substitution was denied by the Special Term. On appeal, the Appellate Division reversed. It did not, however, grant the plaintiff's motion. Instead, it remanded the case to Special Term with directions to grant plaintiff's motion if, upon ascertaining the facts, it was found that Tucker, who had been served with process, was actually the treasurer of the association at the time he was served.

It is thus clear that, under New York law, in cases where the defendant is a business association and not a labor union, an appearance by the association when sued in its common name, and even a verification of its answer by the person sought to be substituted as party defendant, does not constitute an appearance for such person if process had not originally been served upon him.

POINT III

The judgment appealed from violates due process of law because it holds the ten thousand odd members of Local 807 liable for the act of a few hundred of its members.

As we have shown in our original brief in support of a petition for certiorari, the judgment appealed from in effect imposes liability *upon the entire membership of Local 807*. Since it is undisputed that only a small fraction of that membership participated in the allegedly wrongful acts which were made the basis of this proceeding, that judgment has the clear result and effect of making one group of persons liable for the wrongful act of another. In so doing, we respectfully submit, the judgment infringes upon the rights of the members of the Union under the due process clause of the Fourteenth Amendment.

Respondent attempts to meet this argument by advancing the claim that, under the law of the State of New York, a judgment against a union may be collected out of the common treasury of the union even if the membership as a whole did not participate in the act complained of. This contention, in the first place, is entirely beside the point because, as we have pointed out, the judgment appealed from can affect far more than the union treasury and may lead to the individual liability of each and every member of the Union. It is beside the point, also, because even if the law of the State of New York were as it is stated to be by respondent, that would not necessarily mean that that law was in accordance with the provisions of the United States Constitution.

As a matter of fact, the law of the State of New York is not what respondent claims it to be. At least in cases where suit is brought against a labor union by another union or by one of its own members, the law of the State of New York clearly provides that unless all of the members

of the union participated in or authorized the alleged wrongful act there can be no liability in damages on the part of the organization.

The principal case upon which respondent relies is *Glauber* v. *Patoff*, 183 Misc. 400. In that case, the plaintiff, a union member, had been subjected to disciplinary action by the union which was imposed at a meeting at which 45 out of the 89 union members were present. As a result of the disciplinary action the plaintiff was put out of employment. He in turn brought action in court for reinstatement and for damages for loss of wages. The Supreme Court of the State of New York, sitting in Special Term, decided that plaintiff had been wrongfully disciplined and directed his reinstatement with damages for loss of wages. Respondent in the instant case, relies upon that decision as "a complete answer to the contention of the petitioners" and as a clear holding that a union treasury and the members of the union may be mulcted in damages for acts in which only a portion of the membership participated.

What respondent has curiously overlooked is the fact that this decision *was reversed by the Court of Appeals* in so far as the question of damages was concerned. That Court squarely held that the union could not be held liable for damages for an act in which only a portion, although a majority, of its members had participated. The Court said:

> "There was no support in the evidence for the finding that the general membership of the Weber & Heilbroner Employees Benevolent Association knew or approved of the irregularity in the expulsion of the plaintiffs or that there was fraud or bad faith on the part of the membership as a whole. In the absence of such evidence the Court was without power to award recovery of damages as against an unincorporated association. (General Associations Law, Sections 13, 15, 16, 17; Browne v. Hibbets, 290 N. Y. 259, 267.)"
>
> *Glauber* v. *Patoff*, 294 N. Y. 583, 584.

Respondent also relies on the case of *Lubliner* v. *Reinlib*, 184 Misc. 472; and again respondent's treatment of the case is, to say the least, misleading; for the actual holding in that case sustains the position of the petitioners herein.

In *Lubliner* v. *Reinlib*, one union brought suit against another for libel. The allegedly libelous statement had been issued in the course of rival organizational campaigns conducted by the two unions which were seeking to organize the same industry. The actual holding of the Court was that the complaint against the union be dismissed because a labor dispute was involved and the complaint failed to allege that the membership of the union as a whole had participated in or authorized the publication of the alleged libel. Accordingly, the Court held maintenance of the action was barred by subdivision 6 of Section 876-a of the Civil Practice Act. In so holding the Court declared:

> "However, the complaint here fails to specify that the defendant union actually participated in, or authorized or ratified the alleged tortious acts. It mentions only in conclusory form, that the 'defendants conspired and agreed among themselves and with others to malign and traduce the said plaintiff and its officers' and that 'the defamatory matter hereinafter more specifically alleged was published by the defendants in pursuance to their said agreement'. Such conclusory allegations, standing alone in an otherwise detailed complaint, and considered in the light of the provisions of subdivision 6 of section 876-a are inadequate as a matter of law to resist a motion under rule 106.
>
> • • • • • •
>
> "In the complete absence, therefore, of any such allegations in the complaint, the court is constrained to hold that the complaint must be dismissed as against the defendant union, pleaded as an entity, and as against its president, Reinlib, in his representative capacity."

Lubliner v. *Reinlib*, 184 Misc. 472, 480, 481.

There is, of course, no question that in the case at bar, there is a labor dispute. Accordingly, under respondent's own authorities, it is clear that no judgment against the union or against its officers in their representative capacities could properly have been entered, because, as is conceded, the acts complained of were entirely unauthorized by the union or by its officers and were committed by a small dissident group of union members whose dispute was with the union leaders and with the union itself.

Such, at least, is the clearly established rule in cases where suits are brought against labor unions by their members or by other unions. By applying a different rule in the case at bar where the suit against the union was brought by an employer, the Courts of the State of New York have, we respectfully submit, violated the equal protection of the laws clause of the Fourteenth Amendment.

CONCLUSION

For the reasons stated herein and for the reasons stated in our original brief in support of our petition for a writ of certiorari, it is respectfully submitted that the writ be granted.

Respectfully submitted,

Louis B. Boudin,
Attorney for Petitioners,
1776 Broadway,
New York City, N. Y.